

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BALLY MANUFACTURING CORPORATION,

Plaintiff/Counter-
Defendant,

vs.

D. GOTTLIEB & CO., a corporation,
and WILLIAM ELECTRONICS, INC., a
corporation,

Defendant/Counter-
Plaintiffs.

No 78 C 2246

DOCKETED
JAN 18 1984

DEPOSITION

of

WAYNE E. NEYENS

FILED

JAN 17 1984

U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CLAUDE W. YOUNGER, JR.

OFFICIAL COURT REPORTER
U. S. DISTRICT COURT
UNITED STATES COURT HOUSE
ROOM 1818
CHICAGO, ILLINOIS 60604
312-427-4393

BALLY MANUFACTURING CORPORATION,)
)
 Plaintiff/Counter-)
 Defendant,)
)
 vs.) No. 78 C 2246
)
 D. GOTTLIEB & CO., a corporation,)
)
 Defendants/Counter-)
 Plaintiffs.)

Friday, June 29, 1979

10:00 o'clock a.m.

Parties met pursuant to adjournment.

PRESENT:

MR. DONALD L. WELSH
 MR. A. SIDNEY KATZ and
 MR. JEROLD B. SCHNAYER,

appeared for plaintiff;

MR. WAYNE M. HARDING,

appeared for defendant.

- - - -

(The taking of the deposition of WAYNE E.
 NEYENS was resumed at 135 South LaSalle
 Street, Room 1540, Chicago, Illinois,
 as follows:)

WAYNE E. NEYENS,

called as a witness by the plaintiff herein, having been previously duly sworn, was examined further upon oral interrogatories and he did thereupon further depose and testify as follows:

MR. HARDING: Pursuant to Mr. Welsh's request of yesterday, we furnished certain forms from Gottlieb's competitor games file. We reviewed those forms and have produced one of the earliest of the forms plus all the forms pertaining to an evaluation of a solid state pin-ball game by Gottlieb up to the time of the filing of the lawsuit.

DIRECT EXAMINATION (Resumed)

BY MR. WELSH:

Q I show you a document numbered G1960 through G1973, which Mr. Harding just referred to, and ask if those are copies of reports on Gottlieb forms respecting various games of competitors acquired and examined by Gottlieb?

A Yes, they are.

Q A date appears on each form. Is that the date of the examination of the game?

A That is the date of examination.

Q To your knowledge, were all of the

examinations made on the games at the facility of Gottlieb?

A Yes, they were.

Q Is there any indication on the games as to who made the examination?

A No, there is generally not. There are initials on some of them, but not all of them. The same man has done them all.

Q Who is that?

A A gentleman by the name of Robert Malvaisio.

Q And his initials appear on G1960 at the lower right-hand corner, is that correct?

A Yes, that is correct.

Q I believe you stated yesterday he was not electronically oriented?

A That is correct.

Q Now I notice that there is no report for the Fireball.

A On this form?

Q On this form, right. There was the other report which we have discussed yesterday.

A Yes.

Q Do you know why there is not a report of the Fireball game?

MR. KATZ: On this form?

MR. WELSH: On this form, yes.

BY THE WITNESS:

A Yes, being a new game, solid state, we thought it did not fit too well on here. We have since changed our mind and put it on this same form.

BY MR. WELSH:

Q Is it correct then that the other report of the Fireball, which we discussed yesterday, was the only report with respect to that game?

A I believe there was two.

Q Do you recall whether they included the date when the examinations were made or reports were made?

A I do not recall.

Q I hand you what has been marked as Documents 458 through 463 and ask if you recognize those as anything you have seen before?

A Yes, I have seen these.

Q Document GO460, which is a memo addressed to you from Mr. Joe Robbins dated 11/18/1976, do you recall receiving that on or about that date?

A Yes,

Q Were the papers that are attached to it

included with that document?

A. No.

Q. How about papers numbered GO 4612 and 3?

A. Yes, they were together.

Q. With GO 460?

A. Yes.

Q. Do you also recognize documents GO458 and
459?

A. Yes.

Q. What do you recognize them to be?

A. They pertain to the show in 1976.

Q. Who prepared that document?

A. I did.

Q. So those are your notes of games as you saw
at the MOA show in 1976?

A. That is correct.

Q. I see a reference on GO459 under the heading
Bally, to the name Aladdin's Castle. Was that the name
of a pinball game of Bally that you examined at the show?

A. If it was on that list, it would have been
there, yes.

Q. Was that a solid state?

A. I do not recall. Could I see the document,
please?

Q Surely.

A Neither of the Bally games were electronic games.

Q So the Bally Freedom indicated there was not electronic?

A That is correct, it would be so marked if it was.

Q On that same page, G0459, is a reference to Mirco Spirit of '76. Do you know whether that was a solid state game or not?

A It is not marked as being solid state. I could have missed it. I do not know.

Q Do you know now that it was a solid state game?

A No, I didn't.

Q You did not find that out when it was examined at Gottlieb?

A I did not know that it was the same game.

Q Was the game Mirco Spirit of '76 that was examined at Gottlieb a solid state game?

A Yes.

Q You just do not recall?

A I may have missed it in copying my notes. It could have been. I do not know.

Q Were there any solid state games that you saw at the show?

A Yes, they are marked on there.

Q Which ones?

A Saga, Risell had Lady Luck both ways, both mechanical and electronic.

Underwater, Criterium '75, Playmatic had New World. I mentioned here some solid state control, used standard reels, score reels. I did not mark the rest whether they were or were not, I do not know.

Q You do not recall whether any of those were microprocessor controls?

A No, I do not.

Q With respect to the Saga Rodeo and the Risell Lady Luck Underwater on Page 30458, and Criterium '75, does the designation electronic after those games indicate that they are solid state?

A Yes.

Q Do you know if any of those were micro-processor?

A I do not. I never looked into that.

Q We have found one report of the Bally Fireball game, and a part of which is Document G1275, which bears the date 10/28/76.

To your knowledge, at least on or about that date, did Gottlieb have the Bally Fireball?

A Yes, we did have it.

Q Referring now to Document G539.2, which you indicated to be in your handwriting, which appears to be a second page of some notes, on the first page of which appears the date 12/6/76, there appears this statement, "they will call us when game is complete. It should be one or two weeks."

Was that game the Royal Flush game?

A I do not recall.

Q I refer you not to Document G1948, which is a page of handwritten notes entitled "Meeting with Rockwell, 1/6/77", and ask if you recognize that as notes made by you on that date?

A That is my writing.

Q This contains a reference to the Royal Flush game with the statement, look at and completely check present game to determine if our Royal Flush is programmed and working as our 10/29/76 proposal. Also at the bottom it says, "We must send Rockwell the next game."

Does that statement refresh your recollection as to whether the game referred to on

G539.2 was a Royal Flush game?

A Yes, it would be that.

Q Could you tell us what was the status of the Rockwell development work for Gottlieb as of this date, 12/6/76?

A They were proceeding with their circuitry to get us ready for production. Working on their programming.

Q Were they using the Royal Flush game in that work?

A Yes, they were.

Q I show you now Document G0979 and 980, which appear to be handwritten notes with the heading "Rockwell," and the date 12/6/76, and ask if you recognize those as something you have seen before?

A Yes, I have seen it.

Q What do those notes refer to?

A They are Allen's notes at our meeting out there when we went out to see the game.

Q You and Mr. Edwall both went out?

A Yes.

Q You were both there on the 6th of December of 1976?

A Yes.

Q How many days were you there?

A One and a half.

Q What did you do with respect to the project out there during that time?

A Checked the game for them, tried to teach them a little bit about pinball.

Q Are those notes of Mr. Edwall, G0979 and 980 notes of items that were to be corrected?

A Yes.

Q I show you now a Document G1101, which appear to be written notes with the date 12/7/76 and ask if you recognize that as something you have seen before?

A That would be Allen's notes of the following day.

Q Still out at Rockwell?

A Yes.

Q What do those notes relate to?

A They relate to a meeting we had with Futaba.

Q Was this a part of your continuing effort to select displays to be used in the Rockwell games?

A Yes, we wanted the best display on the street and we worked on it.

 Q I show you now a document No. G0541 and ask

if you recognize that as notes in your handwriting regarding a telephone call with Mr. Browning on December 14, 1976?

A Yes.

Q Item 2 indicates has a software or hardware problem on setup. Do you know what that problem was?

A No, I do not.

Q Item 3 indicates, "Will call us as soon as ready."

Do you recall as to what was to be ready?

A The game for us to check.

Q The Royal Flush?

A Yes.

Q With modifications suggested by you or Mr. Edwall?

A Yes.

Q You stated we do not want -- in Item 4 of that document G0541, you stated we do not want to come out the week of 20 to 24. Do you recall when you did go out?

A No, I do not.

Q Do you recall around that time whether you considered Rockwell had significant problems completing the Royal Flush prototype?

A No, no, they had no problem really. Minor problem.

Q These were problems of the type that were referred to in these notes of Mr. Edwall, G0979 and G0980?

A Yes, there are many cheating problems in startup work, and they did not understand pinball.

Q What do you mean by "cheating problems"?

A Well, players try to cheat pinball machines, as you know.

Q Were your problems involving their handling-- ways to avoid or counteract cheating by players?

A Yes.

Q Were there any other areas where their lack of understanding of pinball games led to a need for correction or addition?

A Power up problems.

Q What do you mean by that?

A I mean the players toggling the on/off switch, an area that had to be watched very carefully.

Q Were there any other areas of problems at that time that you recall?

A Not that I can recall.

 Q Do you recall feeling that there was such a

need to solve those problems that you could help by sending to Rockwell a Bally solid state game?

A. No, one had nothing to do with the other.

Q Did you, in fact, send a Bally game to Rockwell during this time period?

A. Yes.

Q What game did you send?

A. I do not recall the name.

Q Whose decision was it to send the game?

A. Mine ultimately.

Q Did you discuss it with any other members of the top management at Rockwell?

A. I do not recall.

Q What was the purpose of sending the game to Rockwell?

A To try to show them what a game on the street looked like, remembering they knew nothing about pinball machines.

Q Were not games available for them out in California?

A. It would be most difficult for them to get one.

Q Do you have any distributor in California that could have furnished them with games?

A. They could have.

Q Wouldn't that have been cheaper than sending a game from Gottlieb?

MR. HARDING: If you know, answer the question, but do not engage in speculation.

Would you please read the question back?

Q (Read by the reporter.)

BY THE WITNESS:

A I do not know.

BY MR. WELSH:

Q Do you have any idea?

A I have an idea.

Q What is that?

MR. HARDING: Are you asking for speculation now?

MR. WELSH: No, I am asking for the idea that he has.

MR. HARDING: He said he did not know.

MR. WELSH: That is right, that is not speculation. This is his idea.

MR. HARDING: If it is not founded on fact, it is speculation, counselor. As long as the record is clear it is speculating, you can speculate in this one limited area.

BY THE WITNESS:

A It costs them more to ship 2,000 miles than it does two miles.

BY MR. WELSH:

Q Thank you. Had you not already shipped two Royal Flush games to Rockwell, one to be converted?

A One was a game, the other was a play board with a cabinet.

Q And the play board had all of the switches and the bumpers and everything on it?

A Yes.

Q Was it intended that the complete game remain intact?

A Yes.

Q Was that then not available for Rockwell to see what a game on the street looked like?

A To a degree.

Q To what degree did it not meet that criterion?

A Electronic games are different in respect that they have bookkeeping-related problems, which the mechanical game does not have.

Q So you were really sending them the Bally game so they could see what an electronic game on the street looks like?

A Yes.

Q Were there any other electronic games on the street other than Bally at that time?

A I do not know.

Q Why did you select a Bally game?

A It was available.

Q Any other reason?

A None that I know of.

Q By that time, were you aware of the Spirit of '76 or Mirco as an electronic game?

A I do not know.

Q I show you a document G1962, which was produced this morning as one of the Gottlieb test reports on games of competitors purchased and examined at Gottlieb, and which identifies the game Spirit of '76 or Mirco games. It bears the date of June 14, 1976, which I believe you testified indicated the date of examination of the game at Gottlieb?

MR. HARDING: Counselor, excuse me just so the record is straight, it does not say Mirco games.

MR. WELSH: I'm sorry, it says Micro. Do you know whether that was a Mirco game or intended to be a Mirco game?

THE WITNESS: Sure.

BY MR. WELSH:

Q Do you recall whether you were aware when the Spirit of '76 game was examined at Gottlieb that it was a solid state game?

A Yes.

Q Do you recall exactly when the Bally game was sent to --

A No, I do not recall.

Q I show you a document which has been marked as G1194 and ask if you recognize that as something you have seen before?

A I do not remember ever having seen that.

Q Do you recognize that as being in Mr. Edwall's handwriting?

A I do not know.

Q Paragraph 1 of this document states:

"We want Rockwell to see the Bally 'Freedom' game so they have a good idea of exactly what we want."

This document is dated 12/30/76.

Do you agree that that is an accurate statement of a reason why the Bally game was sent to Rockwell?

A No.

Q You do not agree?

A That is not an accurate statement. It is a misleading statement.

Q In what respect is it inaccurate or misleading?

A Well, it is too broad, it is a very broad statement and does not mean exactly what we sent it out there for.

Q Didn't you send it out to give Rockwell a good idea of exactly what you wanted, at least in some area?

A In some areas. I do not see that.

Q Those areas were at least the ones that you have mentioned, is that correct?

A That is correct.

Q Does that document help refresh your recollection as to what Bally game went to Rockwell?

A Yes.

Q Was that the Bally Freedom game?

A Yes.

Q That was a solid state Freedom game, is that correct?

A Yes.

Q Does the document help you recall approximately

when the game was shipped to Rockwell?

A. The game would follow very shortly after that date.

Q. Document No. G1963, which is again one of the competitor evaluation forms, refers to examination of the Bally Freedom four-player game on 2/21/77, is it not?

A. That is what the page says.

Q. That date is normally the one when the game is examined?

A. Yes.

Q. This would seem to indicate that there was a second Freedom game in addition to the one that was sent to Rockwell. Do you agree with that?

A. No.

Q. Do you know whether there were more than one Freedom games obtained by Gottlieb?

A. No, I do not. This one dated 2/21 -- may I look at that?

Q. Surely.

A. This Bally game, Freedom, dated 2/21 is a mechanical game. It is not solid state.

Q. What reason do you have for concluding that?

A. Well, it says under light box, ten relays, 16 score units. They do not have that in the solid state

games.

Q I show you another one of the ^{COMPETITOR} ~~computer~~ evaluation forms bearing No. G1961. Does that indicate that on March 30, 1976, an Allied Leisure Dynamite game was evaluated or examined at Gottlieb?

A Yes, it does.

Q Do you know whether that was an electronic or solid state game?

A Solid state.

Q Were you informed of that on or about the date it was examined at Gottlieb?

A. Yes.

Q So as of the later date, when the solid state or electronic game was sent to Rockwell, you also had been informed of the Allied Leisure game?

A Yes.

Q Would you state again what were the parts of the Bally game that you wanted Rockwell to become familiar with?

A Bookkeeping.

MR. HARDING: I'm going to object to the question. I do not believe, counsel, that he referred to it as parts of the game.

MR. WELSH: He said that the statement on

Document G1194 was not accurate because it implied that they wanted the Rockwell game to be exactly like the Bally game in all respects, and he said there were some respects and he agreed with me that he had indicated some respects in which they wanted Rockwell to become familiar with respect to the Bally game.

I am asking him simply for those respects.

MR. HARDING: I am objecting to the use of the term "parts," when I believe his testimony was areas, certain other areas.

MR. WELSH: Okay.

BY MR. WELSH:

Q. Could you tell me the areas?

A. The areas where pinball knowledge is essential.

Q. Not electronic knowledge or microprocessor knowlege?

A. The relation of pinball to electronics, I guess would be the way to put it.

Q. So one of them was bookkeeping, one area. Do you remember any other area specifically?

A. No.

Q. Did you have any discussion with Mr. Edwall regarding the reasons for sending a Bally game to Rockwell?

A. No.

Q Did you discuss those with anyone at Rockwell?

A I do not recall.

Q Did you send the game out without expressing why it was being sent?

A No, of course not.

Q What were the reasons that you told them as to why it was being sent?

A I do not recall.

Q Do you have any recollection at all?

A No.


Q You have used the term bookkeeping. What do you mean by that?

A There is a system in electronic games for keeping track of the number of coins, different slots, number of replays won, that type of thing.

Q Anything else in the bookkeeping area?

A No.

Q I refer you again to Document G1194 and call your attention to Paragraph 2, which states, "Light box construction will be similar to Bally's in that the door opens from the front and swings on hinges. All display boards and name and scene lamps on front part of door. All other circuit boards are inside the light box."



Do you recall if the light box construction was an area that you wanted Rockwell to become familiar with so far as the Bally game was concerned?

A No, I do not. They had nothing to do with the light box construction whatsoever.

Q Do you recall discussing the light box construction with Mr. Edwall?

A No, this is out of his area and he would have had very little to say about this except for heat flow. That would be his only position.

Q And you do not recognize this document as being in his handwriting?

A It could be his handwriting. I am not a handwriting expert. Being a Xerox copy like this, I do not recognize it for sure.

Q Do you believe that it is in his handwriting?


A I believe it is, but I do not know for sure.

Q But you do not have any recollection of discussing the light box of Bally with him?

A No.

Q Do you know whether Rockwell personnel examined the electronics of the Bally Freedom game?

A No, I do not.

 Q Have you had any indication at all from

Mr. Edwall or anyone else including Rockwell personnel as to whether they also examined the electronics of the Freedom game?

A I am sure they looked at it.

Q But you have no specific basis for that?

A Yes, I do.

Q What is that?

A I believe they made a list of all the components.

Q What was the purpose of that?

A Pricing.

Q For what purpose, pricing in what respect?

I do not understand.

A I suppose they wanted to figure out how much it cost.

Q Do you know if they did that with a view toward duplicating the system?

A No, no way. The system is already set many months before that time.

Q Your system, you mean?

A Yes.

Q Do you have any idea as to why they wanted to determine the cost of the Bally game?

A I do not know.

Q You have no idea?

A I do not know. I do not recall.

Q I show you document number G0524 through G0533 and ask if you recognize those as a copy of anything you have seen before?

A I do not recall having seen it.

Q G0524 has a heading, "Estimated Cost Breakdown on Bally Equipment" and bears the date 1/11/77. Do you have any recollection as to whether anyone on or about that date was making an estimate of the cost of Bally equipment?

A No.

Q To your knowledge, did anyone at Gottlieb ever make an estimate of the cost of any Bally equipment?

A I do not recall.

Q I show you a document marked G1831.1 and ask if you recognize that as anything you have seen before? This being a page of handwritten notes with the heading, "Calls to Rockwell," and bearing various dates from January 11 to at least February 3, 1977.

A I do not recall having seen that.

Q Do you have any belief as to whether those are notes of Mr. Edwall on G1938.1?

A That looks like Edwall's writing.

Q Do you believe it is?

A Yes.

Q On January 13, which is two days after the date on Exhibit G0524, there is a notation on G1938.1 of a call with R. Browning and contains the statement take a good look at Freedom, then came some dollar amounts. First approximately \$450 to do the job, somewhere between \$450, not 100 percent price for this component.

Do you recall discussing that subject matter with Mr. Edwall?

A Yes.

Q Does it refresh your recollection as to whether Rockwell did a cost analysis on the Bally Freedom?

A I do not recall.

Q Do you believe that that was done?

A I believe it was done.

Q Would you believe that Document G0524 relates to that?

A This looks like something that Al might have done. That is -- but Al does not know material cost on anything. I cannot imagine him doing this.

Q On this same document G1838.1 under date of February 7, 1977, is a note "R. Browning called me to ask

when No. 409 shipped. I said today."

To your knowledge, was the first 409 game or part of a game shipped to Rockwell on or about the date of February 7, 1977?

A Yes.

Q Referring now to Document No. G0 566 through G0574, I ask if you recognize those documents as anything you have seen before?

A These are our final parameters.

Q Prepared by Mr. Edwall?

A Yes.

Q When you say final parameters, do you mean final parameters for the 20 prototypes for the 409 game that were copied?

A The prototypes for production games. Prototypes are always production games. They are sold as production games.

Q But it is the 20 that --

A The first 20.

Q (Continuing) -- that had been referred to earlier?

A And the next group production.

Q Document G0566 through 574 appear to be similar to Document G1214 through G1222 with some changes

made. I show you a document G1213 through G1222 and ask if you recognize those with the changes?

A Yes.

Q Did you discuss those changes with Mr. Edwall?

A Yes.

Q Were you present when he made the changes?

A I was present when we sat down and discussed this. He scribbled this out as we were talking, and he refined it into this. This second copy of it. He obviously rewrote it and cleaned it up a little bit.

Q I call your attention to Paragraph 9 on G0566, which I believe you have said was the refinement of the document, and on Paragraph 9 I see the notation. 64 switches, on G01214 it shows under the same paragraph what appears to be a crossing out of the six and the addition of a zero after the four.

Do you agree that that would indicate that the document G1214 was a modification of G0566, which was earlier?

A I do not know.

Q Do you have any idea?

A No.

Q Referring to the next page, could you compare the two documents? Is there an indication there to you

as to which document which might have preceded the other; that is, Page G0567 and G1215?

A Well, 19 was removed on Document G0567. I do not know whether he stopped at 19 and picked it up over here and then crossed it off. I have no way of knowing.

Q So you really do not know the relationship between the two sets of documents?

A These are the parameters as we set forth on 1/3/77 as to how the game was to work.

Q Both sets?

A Both sets. Which one came first, I do not know.


Q Were any changes made in the parameters subsequent to that date before they were transmitted to Rockwell?

A None that I know of.

Q Attached to the group of documents G1214 through G1222 is a document G1223 bearing the date 3/30/77.

Do you recognize that as a document you have seen before?

A No, I have not seen this.

 Q Do you know whether that was included among

the parameters sent to --

A I do not know.

Q I show you a document to which appears to be a page of handwritten notes with the heading, "Meeting with Rockwell, 1/6/77," and ask if those are notes made by you at a meeting with Rockwell?

A Yes.

Q Was that meeting held on that date?

A Yes.

Q Where was the meeting held?

A Rockwell.

Q Was the purpose of that meeting to present them with the new parameters or the final parameters?

A I do not know.

Q Paragraph 1 states look at and completely check present game to determine if our Royal Flush is programmed and working as our 10/29/76 proposal.

Is that 10/29/76 proposal document numbered G0517 through G0523?

A Yes.

Q Were those final parameters for the Royal Flush prototype?

A Were they for the Royal Flush prototype?

Q Yes.

A. Yes.

Q. Now referring to these documents we have just discussed, what was the status of the Rockwell work for Gottlieb as of this January 6, 1977 meeting?

A. To completely check out the game. We owed them \$25,000. We had to check it out to make sure they did the work they said they were going to do.

Q. Is it correct that as of this time, the Royal Flush prototype was modified in accordance with the parameters that you gave them and corrections that you had suggested, and all that was left to do with respect to that was to determine that it followed your parameters so that you could then make your \$25,000 payment?

A. Yes.

Q. As of that time, was it not the beginning of the work on the 20 prototype units by Rockwell?

MR. HARDING: Would you repeat the question?

THE WITNESS: The question was not complete.

Q. (Read by the reporter.)

THE WITNESS: Would you rephrase that, please?

BY MR. WELSH:

Q. As of that time, was Rockwell beginning its work that was specific to the 20 prototypes after having finished the Royal Flush work?

A They would then start the 20, yes.

Q That is indicated, is it not, by the statement on G1948, "We must send Rockwell the next game."

A It would indicate that.

Q That is also consistent, is it not, with the date of the final parameters for the prototypes as shown in G0566 through G0574 and G1214 through G1222?

A Yes, that is consistent.

MR. WELSH: Let's take a five-minute break.

(There was a brief recess, after which the taking of the deposition was resumed as follows:)

MR. WELSH: May I have the last question and answer, please?

(WHEREUPON, the record was read by the reporter.)

BY MR. WELSH:

Q Referring to Document G1948 or notes of the meeting with Rockwell on January 6, 1977, Paragraph 2C states: "We suggest making prototypes to try out the system." Was that done?

A Yes.

Q Did they make one or two?

A They made two. They kept one and we had one.

This is part of the 20.

Q Were those tested and modified before the final 18 were --

A They were tested but not modified.

Q They were tested before the final 18 were prepared?

A Yes, 20 were hand-wired boards. Their technicians made them up as they went along.

Q I now show you a document with No. G0983, which appear to be some handwritten notes with the heading, "Royal Flush Errors," and bearing the date 1/6/77, and ask if you recognize that as something you have seen before?

A Yes, this is a result of our looking at the Royal Flush on 1/6/77.

Q And that is a list of the things that you found that were not satisfactory?

A Yes.

Q Was any attempt made to correct those items in the Royal Flush game or was it just left the way it was?

A It was left the way it was. We were happy with it.

Q And went on with the --

A (Shaking head.)

Q Were these items of the type that had to be corrected before the game could be put out on location?

A Yes.

Q So they were items that had to be corrected before final production also?

A Yes, that is correct.

Q I show you now what has been marked as Document G1837, which also has been marked as G0507 with portions expunged. It appears to be a letter from you to Mr. Browning dated January 17, 1977. Did you write that letter to Mr. Browning on that date?

A That is correct.

Q This also contains an expungement, does it not, on the last line as to the amount per system that Gottlieb would owe Rockwell?

A Yes.

Q In referring to completion of the first phase of development in the first paragraph of the Document G1837, were you referring to completion of the modification of the Royal Flush to a solid state control system?

A Yes.

Q This is consistent with what you have said

before?

A. Yes, consistent.

Q The second paragraph relates to the construction of the 20 prototypes, which is also consistent with what you said, about this time they commenced that work?

A. Yes.

Q This refers to a particular amount per system for the prototype systems. Was there an understanding that you would pay a particular amount per system if you did not go forward and order further production units, but that if you went forward with production, more production units, that there would be a different price attributed to those 20 prototype systems?

A I do not recall.

Q Was the amount per system of the prototypes \$2,000?

MR. HARDING: Do not answer the question.

BY MR. WELSH:

Q Do you know what the amount was?

A I know what the amount is.

Q But you do not know whether that was a fixed sum in the event that there were no further production units ordered?

A No, I do not recall that part of it.

Q Do you know whether the expunged amount per system was paid for the prototypes?

A I do not know.

Q Who would know that?

MR. HARDING: Do not speculate.

BY THE WITNESS:

A I do not know.

BY MR. WELSH:

Q Do you have any idea?

A I do not know.

Q No idea at all?

A No.

Q Would Mr. Weinberg know?

A I do not know what he knows.

Q I show you Exhibit G0537, which appears to be handwritten notes dated 1/25/77 and ask if those notes are in your handwriting?

A Yes.

Q To what do they relate?

A They relate to a conversation I had with Mr. Browning.

Q What was the substance of that conversation?

A Trying to find where the displays were.

Q He was trying to find out from you?

A. I was trying to find out what was holding them up.

Q. Anything else?

A. He said our latest pricing will be ready tomorrow. That would be 1/26. Tom will call us or bring it in. Also latest contract.

Q. What pricing was being referred to there?

A. I do not recall.

Q. You do not know if it was the pricing of the prototype systems?

A. I do not know.

Q. Did the contract relate to the prototype systems in subsequent production?

A. I do not know.

Q. Did you see the final contract?

A. Yes.

Q. Did it relate to the prototype system as well as the later production?

A. I do not recall the details of the contract.

Q. Do you recall generally whether it included a reference to both of them?

A. I do not recall.

Q. You have no idea at all?

A. No.

Q What did the latest contract refer to?

A There was more than one contract brought in.

Q You mean more than one draft?

A More than one draft, yes.

Q Was there more than one contract to your knowledge ultimately?

A I do not know.

MR. HARDING: I am also going to object generally to the line of questioning of what is and is not a contract. This man is not a legal expert nor a lawyer to determine what is and what is not a contract.

BY MR. WELSH:

Q Were you given drafts of contracts to review?

A Yes.

Q Were you given drafts of more than one contract to review?

A Yes.

Q So you were given more than one draft of more than one contract?

A I do not know that.

Q Did you see the final agreement?

A Yes.

Q Were you present when it was signed?

A No.

Q Did you see it with signatures on it?

A No.

Q How do you know it was a final agreement?

A I do not know.

Q Was there more than one document that you considered to be the final agreement?

A No.

Q Were there several drafts that you examined?

A That is correct.

Q I show you Document No. G0506 bearing the date February 3, 1977 and ask if you recognize that document? It appears to be handwritten notes?

A Yes.

Q What do you recognize that document to be?

A Notes I made at a meeting with Browning, Kovatch and Alwicker.

Q Was that meeting held at Rockwell?

A That was at Chicago. Gottlieb.

Q What was the substance of the subject matter discussed at the meeting?

MR. HARDING: Do not go into pricing discussions as that pertains to the production units.

BY THE WITNESS:

A We were just discussing generalities.



BY MR. WELSH:

Q Generalities with respect to what?

A Well, we were talking a little bit about the Futaba display, about what it costs, the control board would have ni-cad batteries soldered in. The driver board being one board, not breakaway that we had discussed previously, and what the power supply was to include.

Q What was the status of the work on the prototype, the 409 prototype system at that time?

A They were in the process of making them up. They had been in the process of making the board and wiring it.

Q Did you at this meeting discuss any solid state pinball games of Bally or any other pinball manufacturers?

A No.

Q I show you Document G1180 which appears to be a letter to Mr. Edwall and Mr. LaBonte from Rockwell dated February 9, 1977. Are you familiar with that letter?

A I do not remember having seen this letter.

Q Are you familiar with the subject matter of the letter?

A To a minor degree.

Q What is that subject matter?

A That they were in the process of making up the ROM codes at this time.

Q Mr. Edwall was working with someone at Rockwell in that regard?

A Yes, also to a degree. He did not make up the ROM code, they did.

Q Other than this, do you know what Mr. Edwall was doing, if anything, in regard to the Rockwell prototypes at that time of mid-February of '77?

A In detail, no.

Q Generally?

A Many things you do to get ready for production on a game. I do not know for sure what he was doing at that particular moment.

Q Was he working on anything else at that time?

A He was working on something else, yes.

Q Something else?

A Something. I do not know what he was working on. Like I say, at that particular time I do not know what particularly, what particular effort he was on.

Q Well, in general, was he working on the development of the prototype system?



A Yes, yes.

Q So far as you know, he was not working on anything else?

A No.

Q Did that work on the prototype continue until the first production models were actually made?

A Yes, yes, those are production problems, getting ready for production.

Q That is why Mr. Edwall was involved?

A Yes, putting it together.

Q I show you a letter, Document G1193, which appears to be a letter to you from Dale Folwell, manager of Microelectronic Device, Electronic Devices Division of Rockwell. Did you receive this letter shortly after March 11, the date it bears?

A Yes, I received the letter.

Q Does that relate to a continuing effort of Rockwell in connection with the prototype?

A Yes.

Q I show you now Document G0442 through G0444, which bears the heading, "Translation of a Report on Flipper Games," signed by Mme. Bonnett, B-o-n-n-e-t-t, and dated March 25, 1977. Have you ever seen that document before?



A Yes, I have seen it.

Q What occasioned your seeing it?

A It came across my desk.

Q On or about March 25, 1977?

A Must have been sometime after that date,
yes.

Q But near that date?

A I do not know.

Q Do you know how the document happened to
come across your desk?

A Anything of this nature would come across
my desk. Information from outside.

Q Do you know where the information originated
from?

A No, I do not.

Q Do you know who Mme. Bonnett is?

A Never heard of her.


Q Did you read the document?

A Yes.

Q Do you recall discussing it with anyone?

A No.

Q I hand you now a document marked G0508 and
ask if those are notes made by you at Rockwell on
April 5, 1977?



A. Yes.

Q Paragraph 2 says, "Send 'Freedom' back to us. (Told John F)." What did that refer to?

A We wanted the Freedom back.

Q Does that indicate that Rockwell still had the Freedom game at that time?

A Yes.

Q Why did you want the Freedom game back?

A So we could sell it and get our money back.

Q Was Rockwell through with the game at that time?

A Yes.

Q On that date, April 5, 1977, were you not at Rockwell's facilities?

A Yes.

Q That was in Anaheim?

A Yes.

Q Was anyone else from Gottlieb there with you?

A I do not recall.

Q What was the occasion of your being there?

A I do not recall the reason for being there at this time.

Q Referring back to the competition evaluation reports, which were produced this morning, I note that

there was not a report on the solid state Bally Freedom game. Do you know whether there was such a report?

A No, I do not.

Q You stated, I believe, that Fireball was not reported on a form like the other games because it was a solid state and did not fit into that form?

A Yes.

Q Was that also true of the Freedom solid state game?

A No, I do not think so. It came and went and we probably missed it.

Q Do you know whether the Fireball preceded or followed the Freedom game?

A I do not recall.

Q But there are later solid state games that are reported in these reports, is that correct?

A Yes, sir, there is.

Q Did you then change your practice after the Fireball to include solid state games?

A Yes, we found they followed the same pattern, the general information there concerned very little of electronics, none as a matter of fact.

Q Now the Allied Leisure game, Dynamite, reported on 3/30/76, was that a solid state game?



A May I see it, please?

Q Yes.

A That would be a solid state game.

Q Is there any indication on the report to that effect?

A No.

Q How did you know it was?

A The way the light box information was filled out.

Q And what specifically in the light box information?


A Well, specifically relays, units, coils, reels, dummy, that type of information, play boards would be also another indication.

On a mechanical game you would find relays on the play board. You find none on this game.

Q So the presence of relays is the basis for your believing that the Freedom game of Bally reported on February 2, 1977, Document 1963 was an electro-mechanical game, is that correct?

A May I see this, please? That was a mechanical game.

MR. WELSH: Mr. Harding, is it possible that there might have been a report of a Freedom game other



than this I requested, and I assume you did specifically look for Freedom?

MR. HARDING: You requested Freedom and I brought all three of them regardless of whether they were solid state or electromechanical, according to your request.

MR. WELSH: I see only one. That is the only Freedom, is it not?

MR. HARDING: That is correct.

BY MR. WELSH:

Q I show you now Document G1096.1, which appears to be a copy of handwritten notes dated 4/6/77, and the note at Rockwell facility, and ask you if you recognize those as something you have seen before?

A Yes, these are notes by Edwall.

Q Does that refresh your recollection as to whether anyone else from Gottlieb was present with you at Rockwell?

A Allen Edwall was there.

Q I show you Document G0509 and G0510, which have handwritten notes. Are those notes made by you at Rockwell on April 6?

A Yes.

Q I show you further a document G0511. Are

those notes made by you at Rockwell on April 7, 1977?

A Yes, they were made by me.

Q On that date?

A Yes.

Q I show you further Document G1207 through G1209, which are notes bearing the date 4/6/77, notes that Rockwell No. 409 proto. Do you recognize those as notes of Mr. Edwall?

A Yes.

Q I show you further Documents G1098, G1099, G1099.1 and G1100 and ask if you recognize those as notes of Mr. Edwall?

A There is no date on here.

Q I believe there is a date on the second page.

A Oh, on the second page.

Q One was kind of --

A Cut off at the bottom.

Q I think there might have been something expunged on the first one, so we furnish you with an extra copy.

A This is also Allen's notes.

Q Having seen all of those notes, were they made at that same Rockwell --

A Yes.

Q April 6, 1977?

A Yes, in that area.

Q Does having seen these notes refresh your recollection of the purpose you and Mr. Edwall had for being at Rockwell at the time?

A Yes, we went out to check the 409.

Q Was what you were checking the two first prototypes?

A Yes.

Q Do those notes reflect corrections or additions that you suggested be made by Rockwell in those systems?

A He has marked these all okay. As we checked the game and found them okay, we marked an okay. Some things we gave a little bit on.

Q Does the okay mean that they were items that Rockwell agreed to correct?

A No~~x~~, they were things that we checked the game and found it to work as we wanted it to work.

Q Did they contain any suggestions for changes or additions to the system?

A I do not see any change recommended.

Q How about Document G0511 in your handwriting dated April 7, 1977. Does that suggest a change?

A They are just scribbles. I have no way of knowing what they really indicate.

Q There was one reference to "change scoring like Bally." What was meant by that?

A I have no way of knowing. We were not about to change anything at the time.

Q Do you mean the prototype was finalized?

A We were ready to go, yes. This was it.

Q So there were no problems that had to be corrected?

A No major problems, no change.

Q What do you mean by major?

A The game worked, there are always changes in everything you make. You change continually, but we were committing ourselves to this program.

Q You were committed to the program --

A To the system.

Q But I'm asking about the standards of the construction of the prototypes and whether they were completed so as to be ready for production or whether they had any problems at that time?

A Yes, they were ready.

Q Did they go into production immediately?

A They continued to build the first 20.

Q Is that what is referred to in G0509, Paragraph 2, where it says, "Samples or prototypes will be built in late September"?

A Yes.

Q Is it correct that as of this time, April 6, in that meeting, that only the first two prototypes had been built?

A Yes.

Q Was it decided at that time to go ahead with the other 18?

A Yes.

Q Was it also decided at that time to go forward with production after the --

A Yes, after we okayed the 20.

Q And did you okay the 20 as of that time?

A No.

Q When was that done?

A When we assembled the 20 games.

Q After receiving the systems from --

A Yes.

Q -- Rockwell?

A (Nodding head.)

Q Paragraph 6 of G0509 states: "Will send us contract first of next week, have our lawyers look over."

Is that the same agreement we were talking about before?

A Yes.

Q Referring to Document G0511, do you know what is written after "Change scoring like Bally," and there is some other writing that is difficult to understand.

A I might say, "What about switch?" I am asking a question. What about switch, bounce, probably.

Q Does that help refresh your recollection as to what you meant by change scoring like Bally?

A No, no.


Q You do not know whether that refers to part of the electronic system?

A It has nothing to do with the electronics. It might have been placing the score units in a like position or something.

Q Anything to do with switch bounce would be concerning electronics, would it not, rather than placing of lights?

A Yes, that would have to do with electronics.

Q Referring to No. G1100, which I believe you stated were notes of Mr. Edwall at the meeting at Rockwell in April, is the reference to "Electronic sounds like Fireball, only more musical." Does that reference



have any meaning to you?

A. No.

Q Do you recall discussing any generation of sounds in the Cleopatra game?

A. No.

Q You do not recall any discussions of sounds of the Fireball pinball game?

A We never discussed it, putting it into Cleopatra.

Q Did you ever discuss sounds of the Fireball pinball game?

A I do not remember.

Q I show you now Document No. 1200 to 1205 and ask if you recognize those as anything you have seen before?

A I have seen this document.

Q What were the circumstances under which you saw it?

A I don't recall that, I recall they did it.

Q What is the document?

A It is a description from Rockwell to us of their status where they are at.

Q As of the date of the document, April 8, 1977?

A Yes.



Q That was right after you and Mr. Edwall inspected --

A Yes.

Q -- the first two prototypes?

A Right after.

Q Was this document something requested by you?

A I do not recall.

Q Do you recall anything about the document as to why it was prepared?

A No.

Q Did you discuss it with anybody?

A I do not recall.

Q I show you now Document G0441, which appears to be a letter to you from Mr. Chambers of the Contract Administration of Rockwell, Microelectronic Device Division in Anaheim dated April 27, 1977 and ask if you received that letter shortly after that date?

A Yes.

Q It refers to an enclosure of the original of the agreement, emulation of the 409 prototype game, which was completed on April 19, 1977. Does that refer to the final agreement that you referred to before?

A I think that refers to the fact that they



have completed that 409 prototype game.

Q It does indicate the game was completed on April 19. Do you recall what the agreement was referred to there?

A I think they needed something in their file that they had completed the 409 as we had agreed upon, that we accepted the game, and they would go ahead and build these 20 up.

Q Did you keep a copy of that? Did you sign and send back to him a copy of that?

A I do not recall who signed it.

Q Was a copy signed and sent back to them, do you know?

A I made the note that we gave the okay on 4/19, so I assume that -- I do not know.

MR. WELSH: Mr. Harding, did you find in the document search such an agreement?

MR. HARDING: I believe the agreement between Rockwell and Gottlieb was found and it is, I believe, one and the same that we have been referring to.

MR. WELSH: There was not another agreement in addition to the one referred to here?

MR. HARDING: You may ask the witness that question.

MR. WELSH: I am asking you if you found it in the search and are not producing it?

MR. HARDING: I am not aware of anything other than the one agreement in question. You can ask the witness.

BY MR. WELSH:

Q Do you know if the agreement referred to in Document G0441 was the final agreement or was it another document just indicating your acknowledgement of the completion of the 409 prototype program?

A I am not sure.

Q Do you have any idea?

A No.

Q No beliefs at all?

A No.

Q I hand you now Document No. G1174, which appears to be a shipping invoice referring to one prototype system with a shipping date of 5/27/77 to D. Gottlieb & Company by Rockwell. Do you know what is referred to in that document?

A This would be the first two that we received from them, the first two systems.

Q Did you receive --

A Of the 20.

Q Did you receive it shortly after the date that this document bears?

A Yes.

Q What was done with those?

A They were put in the games.

Q What was done with them after that?

A They were turned on, played, checked, worked on.

Q Was any modification made in them after that?

A I do not recall.

Q When you say they were worked on after the game was turned on and played, what did you mean?

A Final adjustments, switch adjustments, maybe poor soldering, who knows.

Q Program changes?

A No, no, on the board itself.

(There was a brief interruption, after which the taking of the deposition was recessed to 1:30 p.m. of the same day.)

BALLY MANUFACTURING CORPORATION,)	
)	
Plaintiff/Counter-)	
Defendant,)	
)	
vs.)	No. 78 C 2246
)	
D. GOTTLIEB & CO., a corporation,)	
and WILLIAMS ELECTRONICS, INC., a)	
corporation,)	
)	
Defendants/Counter-)	
Plaintiffs.)	

Friday, June 29, 1979

1:30 o'clock p.m.

Parties met pursuant to recess.

PRESENT:

MR. DONALD L. WELSH
MR. A. SIDNEY KATZ and
MR. JEROLD B. SCHNAYER,

appeared for plaintiff;

MR. WAYNE M. HARDING,

appeared for defendant.

- - - -

(The taking of the deposition of
WAYNE E. NEYENS was resumed at 135
South LaSalle Street, Room 1540,
Chicago, Illinois, as follows:)

WAYNE E. NEYENS,
called as a witness by the Plaintiff herein, having been
previously duly sworn, was examined further upon oral
interrogatories and he did thereupon further depose
and testify as follows:

DIRECT EXAMINATION (Resumed)

BY MR. WELSH:

Q I show you now Documents marked G1198 and
99. The first one having the heading, "Problems on
6/4/77," and ask if you have seen that document before?
What was the date of your receiving it?

A I do not remember having seen it.

Q Do you recall having problems such as those
indicated on that document after you received the
prototype systems?

A Yes, we had minor problems.

Q Do you recognize that exhibit, G1198 and 99
as being in Mr. Edwall's handwriting?

A Yes.

Q Do you recall having any problems of that type?

A Yes, we had minor problems. I do not remember
precisely.

Q I hand you Document G0423 and ask if those are
notes made by you on June 6, 1977, the date the document bears

A That is my writing.

Neyens - direct

Q Did you make those notes?

A Yes.

Q On or about that date?

A Yes.

Q What do the notes relate to?

A It had to do with looking at the game we had, the two games together.

Q The prototypes?

A Points that I thought obviously we ought to do something about.

Q Other suggestions for corrections or additions with respect to the prototype systems?

A Yes.

Q What does the initial HS stand for?

A High score.

Q Referring to Document G1199, Mr. Edwall's notes of June 4, 1977 appears the statement, "on extra ball setting the new H S is entered. No pay out or extra ball, like Bally's way of paying up the line."

Do these statements have any meaning for you?

A Yes.

Q What do they mean?

A Paying up the line means if there are 4 players playing and if the first player beats a high scorer to date and the second player beats the first player high score to date, paying up the line would mean pay the first player and then pay the second player. By pay I mean --

Q Indicating an extra ball?

A Indicate a free play, an extra or free play.

If you do not do that, then only the second player would win the free play.

Q When you say like Bally's way of paying up the line, what did that mean, just what you have described?

A Yes, just what I described, paying up the line.

Q Was that the way Bally had done it in its --

A I do not recall. It indicates that, but I do not recall.

Q You do not know what Bally game might have been referred to here?

A No, I do not.

Q Had Gottlieb prior to this time had a game in which you paid up the line for --

A Excuse me, I did not follow your first --

Q Did Gottlieb prior to this time have a paying up the line feature?

A No, we never did. We never had that feature on the game.

Q I take it the prototype didn't have it either?

A The prototype had the feature.

Q Did it have it as of the time when this note was made on June 4, 1977?



A. Yes.

Q Was that consistent with this statement on extra ball setting, the new HS is entered, no payout on extra ball?

A On extra ball setting, the new high score is entered, no payout on extra ball. We are getting into pinball talk there and what he is referring to there is an adjustment in the game to change the game from what we call a replay game to an add-a-ball game, and he is saying an extra ball setting -- the switch has been thrown now, it is not on replay. The new high score when someone beats the high score to date, the new high score to date is entered into the memory. But there is no replay given at the end of the game for having accomplished this feat of beating the previous high scorer.

Q Is it correct then that that is not really related to paying up the line?

A That has nothing to do with paying up the line.

Q If the game already had the feature of paying up the line, why would or why did Mr. Edwall note it in his comment?

MR. HARDING: Do not speculate unless you

know his mind.

BY THE WITNESS:

A I have no idea what he is talking about. He is talking about two different subjects. That one line, I have no way of knowing what it is unless he is saying -- I do not know. I would have to speculate.

BY MR. WELSH:

Q Did the prototype system provide -- that is, the prototype system that was being tested and referred to in this exhibit, Document G1198 on 6/4/77, did it, when it was received, have the paying up the line feature, or was that feature added later?

A I do not recall.

Q Do you know if Freedom had that feature?


A No, I do not.

Q Those items listed on Document G1198 and 1199 and 0423, were they items that involved changes in the electronic system or changes in the mechanical parts of the games?

A What changes are you referring to?

Q The changes or the suggestions for corrections or additions on these documents?

A We went down the line and okayed everything here on this page on my notes, 6/6/77. I went down the



line, no change needed, no change needed, okay, fixed with cap, okay, okay, okay.

Q Does okay mean that was corrected by --

A Corrected, it is working.

Q Did the correction involve mechanical correction or correction in the microprocessor system such as programming?

A I do not recall.

Q I hand you Document No. G1210 through G1213, which appear to be a letter from you to Mr. Browning dated June 8, 1977, and ask if you have prepared that letter on that date?

A Yes.

Q What does that letter relate to?

A It refers to a list of things we wanted to correct.

Q And those are the things in the Game No. 409 prototype system that you were testing at that time?

A Yes.

Q Did those changes and corrections involve the electronic system?

A Yes.

Q They were all changes for that system, were they not?



A. Yes.

Q. Does the "okay" appearing next to items indicate that such changes were made subsequently?

A. Yes.

Q. I show you a document numbered GO424 and ask if you recognize that as notes made by you regarding a conversation with Mr. Browning on June 13, 1977?

A. Yes.

Q. What was the substance of that conversation?

A. Well, I made some notes on the conversation with Mr. Browning.

Q. Did that involve the prototype system for the 409 game?

A. Yes.

Q. Did it involve other suggestions for corrections or changes?

A. We are suggesting they change the ROM.

Q. That is the program?

A. Yes, background routine.

Q. That was a substantial change in the programming?

A. No.

Q. Do you recall whether it involved special arrangement with Rockwell as to who would pay for it?

A. I do not recall.

Q I show you another document numbered G0376.1, which is a letter addressed to you from Mr. Bopf, Manager of Electronic Games by Rockwell dated June 14, 1977 and ask if that refreshes your recollection as to whether some special arrangement was made with respect to the additional programs?

A. Yes.

Q Was it not some additional expense that Gottlieb agreed to assume?

A. Yes, as it states there, there would be a rebate when we bought the system.

Q Did you state that it was necessary to change the ROMs?

A. We thought it was necessary.


Q Why did you think that was necessary?

A. To make the game as perfect as possible.

Q Was that necessary to make the corrections and changes that you discussed in your letter of June 8, 1977?

A. Yes, that is correct.

Q I show you a document numbered G1195 and 96 and 97. These appear to be handwritten notes with the date of June 20, 21 and 22, 1977, and ask you if you have seen these documents before?



A. No.

Q. Do you recognize them as notes of Mr. Edwall?

A. No, I do not.

MR. HARDING: Is there an outstanding question?

THE WITNESS: Yes, he asked me if I recognized this as --

BY MR. WELSH:

Q. Notes of Mr. Edwall?

A. I do not know.

Q. Do you have any familiarity with the subject matter?

A. Somebody's scribbling. I just do not know what it is.

Q. I refer you to Document No. G1175 and ask if you recognize that document?

A. It is a shipping memo from Rockwell to us on a hand carry board, control board, driver board and display board.

Q. Did you sign that as having received it?

A. Yes.

Q. What was the occasion of those items being sent to you?

A. I do not recall.



Q Does it have any relation to the notes of G1195, dated June 22, 1977, the same date of the notice of shipping, G1175?

A We did not receive it until the 23rd, so it could not have anything to do with something on the 22nd.

Q I am suggesting the possibility of a telephone conversation on the 22nd that led, I believe you said, to hand delivery.

A It says hand carry.

Q The coincidence of those dates does not refresh your recollection as to what either the occasion of your receiving these or what these notes were?

A No, no, it didn't.

Q I show you now Documents 1162 through 1169 and ask you if you recognize those as anything you have seen before: 1165 bearing the date 7/12/77, and these appearing to be copies of handwritten notes?

A I have never seen this before.

Q Are you familiar with the subject matter of these notes?

A They are all notes of either our technician or another engineer we have on the games that he was looking at.

Q Competitor games?

A. No, no, these are the two prototypes.

Q. Okay.

A. We had these 20 games on and playing all at one time, and he had gone down the line obviously and says -- notes of somebody working on the game.

Q. There is a reference in 1165 to Stern Electronics working with "Univ." Research --

A. Stern Electronics -- Stern wasn't in the business at that time.

Q. That's not Stern?

A. Stern -- maybe they were in '77. I do not recall. Let me think back. Stern Electric working with Universal Research are making immediate Chinese copies of Bally system, Schedule says ready for AMOA show. Bally is completely changing their system. Verbal commitment to operators saying they will stick with system for five years.

Q. Did you have any familiarity with the subject matter of that note as of the date, July 12, 1977?

A. I do not recall.

Q. Do you recall ever hearing that Stern worked with Universal Research?

A. Yes, I heard that.



Q When did you first become aware of that?

A I do not recall when.

Q Are you familiar with Universal Research?

A Only that I have heard of them. I heard the story.

Q What was that story?

A That Stern made a deal, bought them out or sold them, whatever the case might be and copied the Bally system.

Q Had you heard of them before you heard that Stern had bought them out or something else?

A I had not heard of Universal Research before Stern took over Universal.

Q Do you recall when you first heard that?

A No, I do not.

Q Do you recall all of the 20 prototypes being tested?

A Yes.

Q What were the results of those tests?

A We shipped out in the field some quantity, kept a couple in our own plant. Our test result was excellent.

Q When did that testing occur?

A We shipped those games out in August of '77.



Q For testing?

A For field evaluation, yes.

Q Was that in the early part or latter part of August?

A It would be the middle of August.

Q These were Cleopatra games, right?

A Yes.

Q By the time those were shipped out, had you also completed the electromechanical version of Cleopatra?

A As far as production was concerned or as far as --

Q. As far as prototypes for field testing was concerned?

A I do not recall whether it was before or after.

Q Do you recall whether there was simultaneous field testing of the solid state and electromechanical versions?

A No, I do not.

Q Do you recall whether there were evaluations made with the solid state and the electromechanical games side by side on location?

A No, I do not.

Q You do not know if that was ever done even after production?



A. I do not know whether it was ever done. Of the two locations I know of, it was not done that I personally was at.

Q. Do you recall ever seeing any report of two of them side by side?

A. No, no.

Q. I show you a document marked G0377 and ask if you recognize the portion of that document which has not been expunged, that it appears in the portion it has not been expunged.

MR. WELSH: Were we given a copy of the unexpunged portion of that, Mr. Harding?

MR. HARDING: No.

MR. WELSH: Do you have that here?

BY THE WITNESS:

A. I never saw this before.


BY MR. WELSH:

Q. It is not in your handwriting?

A. No.

Q. Do you recall any conference call with Rockwell on or about July 21, 1977?

A. We went on vacation two weeks in July and it seems like that must have been right in the middle of our vacation. We normally go the last two weeks in July.



Q Does the phrase "game won't initialize" mean anything to you?

A I have heard the phrase. It is a common phrase.

Q What does it mean?

A It means the game won't start up.

Q Is that a common failing?

A No more than any other failing. It is a failing,

Q What is it due to usually?

A I don't know.

Q Is there something normally wrong when that occurs?

A Yes, it won't initialize, it is out of order.

Q In what way?


A You cannot play the game. You would have to turn it off and turn it back on again.

Q It gets no power at all?

A It gets power, but not in a way that would allow you to put a coin in and play the game.

Q What occurs that causes that?

A It goes into ozone or a loop, or it won't recognize a coin coming through.

 Q Is that a problem in a microprocessor?

A. No, I would say it's just one problem of many, many. It could be anything. It is a term used.

Q Do you have any idea as to what this document refers?

A. None.

MR. WELSH: Did you find the unexpunged version?

MR. HARDING: Yes.

MR. WELSH: Would you tell us what was your basis for expunging the portion?

MR. HARDING: There are three entries which were expunged, two of which pertain to cost, a third of which I will just read to you right now.

MR. WELSH: Pertained to cost of what? What costs?

MR. HARDING: In this general vein of the relationship between Rockwell and Gottlieb.

MR. WELSH: The production units versus the development units?

MR. HARDING: In the 20 prototype production units apparently.

MR. WELSH: What is the portion that you are willing to read?

MR. HARDING: It says "problems." In fact, I will let the witness read it.



BY THE WITNESS:

A. "The problem or prob. we need 4 add.
games for AMOA show."

Whatever that means.

MR. WELSH: Why was that portion expunged?

MR. HARDING: It was in between two other
entries and it was just inadvertently expunged.

BY MR. WELSH:

Q I show you now Document No. G1325 through
1330 and ask you if you recognize those as something
you have seen before?

A. Yes, I have seen it.

Q What is it?

A. It is a report generated by Edwall on the
final game versus Bally.

Q When was that report?

A. There was no date on this report. There is
no indication when it was done.

Q To your recollection, was it done shortly
after the final game was completed?

A. It would be after the prototype went out and
the samples made.

Q Are you distinguishing samples from prototypes
or ~~do~~ you mean the first ones?

A. There were two shipments of prototypes or samples. The first was a prototype and then we sent out samples, and then we went into production, three stages.

Q. Into which stage did the 20 prototypes fall?

A. Prototype stage.

Q. Okay. And then so there was a prototype stage, involving the 20 prototypes?

A. Yes.

Q. And the next stage was what?

A. Sample stage.

Q. What does that involve?

A. Shipping samples out to our distributors.

Q. Was there a particular number involved with that stage?

A. There was a number involved, yes.

Q. What was that?

A. I do not know.

Q. Did you place an order just for a limited number to go through the sampling stage?

A. Yes.

Q. And then the final stage was the production stage?

A. Yes.



Q Had you reached a decision at the end of the prototype stage to go into the production stage or did that decision wait until you had completed the sample stage?

A The decision was already made at the end of the prototype.

Q At the end of the prototype stage?

A Yes.

Q So it was after the prototype had been out on the field evaluation?

A That is correct.

Q Then you made the decision to go ahead? It was really your main decision to go ahead?

A Yes, that was our main decision, as soon as the prototypes got into the field, we were certain.

Q That was your ultimate --

A That is right, our ultimate commitment.

Q So it was simply a process of moving into the full production that you went into the sample stage?

A Right, 20 do not cover very much of the country or the world.

Q Did you have that normal breakdown into stages as a normal procedure for introducing a new game?

A. No.

Q In other words, you did not have a sample stage?

A Yes, we had a sample stage.

Q But you did not have a prototype stage on the same basis?

A Not exactly the same. On our normal game we built maybe two prototypes before the sample.

Q So you get those evaluated?

A It is a checking of jigs and fixtures and circuitry. Instead of getting involved in too many games, we start out with two, three, four; two generally. In this case it happened to be 20.

Q How about field evaluation?

A That is the samples we had.

Q But you did do the field evaluation in your prototype stage?

A Yes.

Q In this case?

A In this case, yes.

Q In your normal procedure where you are not coming out with a new system like this, by the time you reach the sample stage, are you committed to production?

A Yes.

Q So this was report then, Document No. G1325



through 1330, was generated at the end of the prototype stage and before the sample stage?

A. As far as I know.

Q. How did Mr. Edwall happen to generate this report?

A. I do not know.

Q. Did you request it?

A. I signed it, I do not know.

Q. Do you have any idea of how you happened to do it?

A. I would have to speculate.

Q. I'm asking you if you have any idea?

A. No.

Q. Is it unusual for him to make a detailed comparison of a Gottlieb game with a game of a competitor?

A. Yes, it is unusual.

Q. And you saw this report at or about the time he completed it?

A. Yes.

Q. You did not have any idea as to why he did it?

A. He was told to do it.

Q. By whom?

A. That I do not know. I said I would have to speculate about who told him.

Q He wouldn't have done it normally on his own volition?

A He could have.

Q Do you know what Bally game he was evaluating?

A No, I do not.

Q Do you know why he picked Bally?

A No, I do not.

Q How many samples were made for the sample stage?

A I cannot recall the number.

Q Approximately?

A Approximately.

Q Approximately how many?

A 300.

Q The report is labeled Gottlieb advantages and on the second page G1326 does refer to Bally. Do you know if this was just a comparison or comparison of Gottlieb games with only Bally games?

A I do not know.

Q Do you know if this report includes any disadvantages of Gottlieb?

A Not without reading it in detail, the top says advantages, I believe.

Q You do not recall?

A No.

Q Do you know who other than you saw the report?

A I do not know.

Q I show you now a document marked G1227, which is somewhat difficult to read. It appears to have a heading Bally's Evil Knievel versus Jet Spin. Have you seen that document before?

MR. WELSH: Maybe you have the original,

Mr. Harding?

MR. HARDING: I do not think so.

BY THE WITNESS:

A I have never seen this. I do not know what it is.

BY MR. WELSH:

Q Does the name Evil Knievel mean anything to you in pinball parlance?

A It is a Bally game.

Q Was it a Bally solid state game?

A Yes.

Q Do you recall when it was sold in relation to the Cleopatra?

A No, I do not.

Q Does Jet Spin mean anything to you?

A It is a game.

Q Of whose manufacture?

A. Ours.

Q. ~~Solid state?~~ SOLID STATE?

A. ~~Yes.~~ No

Q. Cleopatra was the first game, was it not?

A. Yes.

Q. ~~Where did Jet Spin fall in that, second, third?~~

A. ~~Third, I think. I'm not sure.~~

Q. Do you recall anyone making a comparison between the Bally Evil Knievel and the Jet Spin?

A. No, I do not -- I have never seen this before.

Q. Do you recall discussing the two games with anyone?

A. No, no.

Q. During the time that you were working with Rockwell in the development of the Royal Flush system and then the 409 and subsequent systems, did you ever consider the possibility of anyone other than Gottlieb or Rockwell obtaining copy protection on the control system for solid state pinball games?

A. No.

Q. It has never occurred to you?

A. No.

Q. Did you ever see any patent pending notices on any Bally or Midway pinball games?

A Yes, I have.

Q Did you see those during the process of working with Rockwell before your prototype system was completed?

A I do not know.

Q You do not know or you do not recall?

A I do not recall.

Q Do you recall discussing the possibility or matter of patent protection with anyone at Rockwell?

A We mentioned it to him.

Q When did this occur?

A We told them right from the beginning we want no patent problems.

MR. HARDING: I believe, Mr. Welsh, the Judge has already ruled on any indemnity-type discovery. Insofar as your questions seem to be going in that direction, I caution you to refrain from that area.

BY MR. WELSH:

Q When did you notice the patent pending notice on a Bally or Midway game?

A I do not recall.

Q Was it during the time you were working with Rockwell in the development of your first commercial solid state?

A I do not recall.

Q Do you have any idea at all?

A No, none.

Q Do you recall seeing it on the Fireball game?

A No.

Q What was the occasion for your seeing the patent pending notice on the Bally or Midway game?

A Like I say, we look at all games and I have seen it on some games.

Q Do you recall which games?

A No, I do not.

Q Did you see it at your facility?

A Yes, that is the only place I have looked at a game.

Q Have you also seen a patent number on any Bally solid state pinball game?

A Yes.


Q Do you recall the occasions when you saw it?

A No, I do not.

Q You do not recall when?

A I do not recall.

Q When you mentioned to Rockwell from the beginning that you did not want any patent problems, were you concerned that Bally or somebody else might have an application pending?



A. No.

Q. And you never discussed the possibility of Bally obtaining protection with Rockwell?

A. No, never.

Q. When you mentioned to Rockwell from the beginning that you did not want patent problems, did you have any particular patent problems in mind?

A. None, no, just general conversation, trying to protect ourselves.

Q. Did you give any consideration at all during that time to whether Bally might obtain patent protection?

A. No.

Q. When you saw the patent pending notice on a Bally or Midway game, did you then wonder whether they may be obtaining a patent?

A. No.

Q. Did you think they were falsely marking patent pending on it?

A. No.

Q. You just did not give it any thought at all?

A. They put that on other games over the years, not necessarily solid state games.

Q. Did you attribute any significance to the marking when you saw it on solid state games?



A. No.

Q. I show you a copy of U. S. Patent No. 4,093,232 through Nutting, et al., which is the patent in suit, and ask if you have seen a copy of the patent before?

A. I have seen it.

Q. Have you read the patent?

A. I have not.

Q. Have you discussed the patent with anyone at Gottlieb?

A. No.

Q. Not even since the suit was filed?

A. Yes.

Q. Had no discussions regarding the patent?

A. None.

Q. Did you ever discuss a patent with anyone from Rockwell?

A. No.

Q. Did you ever discuss the suit with anybody from Rockwell?

A. No.

Q. You have no recollection of that at all?

A. No, none.

Q. But you have seen the patent?

A. Yes.

Q What was the occasion of your seeing the patent?

A When we received it, I looked at it.

Q How did you receive it?

MR. HARDING: Do not reveal any attorney-client communications. If you received the patent from your attorney along with a communication, do not reveal the communication.

BY THE WITNESS:

A It came into our office from Mr. Weinberg's office. He received it.

BY MR. WELSH:

Q Do you know who sent it to him?

A No, I do not.

Q Do you know how he received it?

A No, I do not.

Q Did he hand it to you?

A Yes.

Q Did he say anything when he handed it to you?

A I do not recall.

Q Did he ask you to look at it or read it or study it?

A Yes, in that vein.

Q And you did not do that?

A. I did not read it.

Q. Any particular reason for not reading it?

A. Well, I looked at it and I felt it was a little over my head. I passed it on to Allen to read.

Q. Do you know if he read it?

A. I do not know.

Q. Did you ever discuss the patent or any part of it with him?

A. No, I did not.

Q. You are aware that the Rockwell control system supplied to Gottlieb for its games and the Gottlieb games are charged to have infringed the patent?

A. Yes.

Q. Have you ever given any consideration to changing the Gottlieb electronic system to avoid the patent?

A. No.

Q. Have you ever discussed that with anyone?

A. No.

Q. That includes anyone at Rockwell?

A. Yes.

- Q. Did you ever discuss with Rockwell or give consideration to obtaining patent protection on any aspect of the Rockwell system?

A I do not recall any.

Q Has Gottlieb ever obtained a patent on any of its pinball games or parts thereof?

A Yes, should have.

Q But you do not --

A Unfortunately not.

Q Was that a policy not to acquire patents?

A That was a policy of Gottlieb. Years ago to make everything available to the industry, which we did, many things we invented were copied by Bally.

Q Does that policy prevail today?

A I think it is changing.

Q Has it changed?

A I do not know.

Q Has it come up in any of your top management discussions?

A We have discussed it.

Q But you do not know whether it has changed?

A We have been acquiring patents on various items.

Q Is that since the suit was filed?

A No, the suit has changed nothing.

Q When were the discussions held regarding the policy of the company with respect to obtaining the

patent attorneys?

A Sometime back.

Q Prior to the time the suit was filed?

A Prior to that time, yes.

Q After the time you started working with

Rockwell?

A Prior to that.

Q Prior to that time?

A Yes.

Q What was the substance of those discussions?

A Well, we thought we were being taken advantage of by several companies. We are innovators.

Q Do you consider yourself to be or do you consider Gottlieb as an innovator with respect to solid state pinball?

A As far as the word innovator goes, no.

Q Do you consider that Bally was an innovator with respect to solid state pinball?

A No.

Q Do you consider that anyone was an innovator with respect to solid state?

A It is a natural outgrowth of technology.

Q You did not consider that anyone was an innovator?



A. No.

Q. What does innovator mean to you?

A. Originator.

Q. The first?

A. The first.

Q. Do you consider that Mirco with its Spirit of '76 was the first manufacturer of a microprocessor controlled pinball game?

A. I do not consider them a manufacturer of a solid state pinball machine.

Q. You do not consider the Spirit of '76 --

A. They did not manufacture that. How many did they manufacture?

Q. The Spirit of '76 was a microprocessor game, was it not?

A. It was a game they put out. I do not know how many they made, but the rumor is they made half a dozen.

Q. But you did not consider them; that is, Mirco games, to be a manufacturer of pinball games?

A. They did not manufacture enough to be an influence on any market.

Q. Who was the first to manufacture microprocessor controlled games that you did consider to be an influence



on the market?

A. Bally.

Q Are you aware of when Bally became the first in relation to other manufacturers who had an influence on the market?

A. No.

Q You do not know how long prior to this coming out Bally came out with that scheme?

A. No.

Q Do you keep track of what other competitors are doing?

A. Yes, we do.

Q But you do not have any idea?

A. I do not recall it.

Q Do you have any idea at all?

A. No.

Q Are you acquainted with Frank Bracha?

A. No.

Q Do you know a Joe Lally?


A. No.

Q Are you acquainted with a Frank Murphy?

A. I have heard of him.

Q What have you heard about him?

A. A Bally engineer.



Q Frank Murphy?

A Yes.

Yes, sir, an engineer. I do not know if he is with Bally or Williams. I have never met the man.

Q Would it surprise you to learn that he is not associated with Bally, but with --

A Williams?

Q He is associated with Williams?

A I have heard of the man. I have never met him.

Q Have you ever met David Nutting or Jeffrey Fredrickson?

A No.


Q Did you discuss with Mr. Edwall the deposition that he has been giving here?

A No, I have not, not one word.

Q Have you read the transcript of any portion of his deposition?

A No, sir.

MR. WELSH: Let's take a few-minute break. I think that we are finished. I just want to check my notes.



(There was a brief recess, after which
the taking of the deposition was resumed
as follows:)

BY MR. WELSH:

Q In June of 1978, what pinball game was being
manufactured and sold by Gottlieb?

A In June of '78?

Q That is almost a year ago.

A I do not know. I can't keep it straight.

Q I have here some copies of brochures. Perhaps
these would help refresh your recollection.

What I would like to know is what
machine was being manufactured and sold on June 6, 1978,
when the suit was filed, and what games have been
manufactured and sold since that date?


A Count Down was sold since that date, I am
sure. Solar Ride, Dragon -- I do not know.

Charlie's Angels was at the show last
year.

Q That was in '78?

A Yes, so that would certainly be after June
of '77.

Q So these three for sure. One is Charlie's
Angels, another one is Solar Ride and another one is --



MR. HARDING: June of '78?

MR. WELSH: What did you say?

MR. HARDING: June of '77?

THE WITNESS: June of '78.

BY THE WITNESS:

A. June of '78. That was made in fall of '78.

BY MR. WELSH:

Q. Which one was?

A. Charlie's Angels. I am trying to put them in order. I do not know if I can get them in the right order or not.

I think that is the order they were made. I might be wrong, but I think this is the order. Let's see, June of '78 -- it is in this area someplace. We must have records that tell us exactly. I am speculating when I tell you it is one of these.

Q. When you say one of these, you think it was either Close Encounters of the Third Kind or Dragon?

MR. HARDING: Do not speculate.

BY THE WITNESS:

A. I can't -- I do not really know. You must have records that show it. My memory does not serve too well.

MR. WELSH: I do not know that we have records

that show it. Maybe you could supply that information to us.

MR. HARDING: We will stipulate that there have been solid state pinball games sold since the issuance of the patents. I believe accounting has been put off to a later date if you are after some other bit of information. Perhaps we can --

MR. WELSH: We are after the specific games.

BY MR. WELSH:

Q Do you recall with some certainty that Close Encounters of the Third Kind preceded Dragon?

A I would be speculating.

MR. KATZ: Why don't we just request that information.

MR. WELSH: I would like to ask that you tell us what the game was, being manufactured and sold on June 6, 1978, and subsequent games.

MR. HARDING: That question is noted.

MR. WELSH: Will you supply that information?

MR. HARDING: We will consider it.

MR. WELSH: When will you advise us?

MR. HARDING: During the week of the Bally depositions, July 9, I believe.

MR. WELSH: That completes my direct examination.

You do not wish to cross, I presume?

MR. HARDING: Gottlieb does not have any cross examination.

MR. WELSH: Will you stipulate that he may sign the original of the transcript before any notary?

MR. HARDING: Surely. We will observe our practice of not filing the transcript until a suitable protective order has been reached.

(AND FURTHER DEPONENT SAITH NOT.)

I have read the foregoing transcript of my deposition consisting of pages 1 to 236, inclusive, and the same is a true, correct and complete transcript of my said deposition as it now appears, so given at the time and place aforesaid.

Wayne E. Neyens
Wayne E. Neyens

Signed and sworn to
before me this 7th day
of August, A.D. 1979.

Jane L. Dybl
Notary Public

My commission expires
5-24-83